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ATTORNEY FOR DEFENDANT

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

vs.

RACHEL POWELL

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DOCKET NO. 21-mj-00257

Memorandum in Support of Defendant's Motion for Pre-Trial Release

Rachel Powell, by her attorney, Michael J. Engle, Esquire, provides the within memorandum in support of Ms. Powell's Pre-Trial release:

On or about February 5, 2021, the Government unsealed a five (5) count Criminal Complaint charging the Defendant, Rachel Marie Powell, with allegedly violating the following statutes:

- (1) 18 U.S.C. § 1512(c), Obstruction
- (2) 18 U.S.C. § 1361, Depredation of Government Property
- (3) 18 U.S.C. § 1752 (b)(1)(A), Restricted Building or Grounds with a Dangerous Weapon
- (4) 18 U.S.C. § 1752(a), Restricted Building or grounds
- (5) 40 U.S.C. § 5104(e)(2), Violent Entry or Disorderly Conduct

On the same day, Ms. Powell made her Initial Appearance before Magistrate Judge Patricia L. Dodge, where she was temporarily detained. The Detention Hearing is scheduled for today,

February 9, 2021 at 2:30 P.M. It is the Defendant's intent to stipulate to identity in this matter and to respectfully request that the Government's motion for detention be denied.

Since the criminal charges filed against Ms. Powell do not trigger the rebuttable statutory presumption that no conditions of release can adequately assure her attendance at trial, the burden remains with the Government to prove, by clear and convincing evidence, that Ms. Powell is a danger to the community or, by a preponderance of the evidence, that the defendant poses a flight risk pending trial. Here, the Government cannot meet the required burdens of proof. Ms. Powell, a long-time resident of Pennsylvania and single mother of eight (8) children, made efforts to turn herself in to the Federal Bureau of Investigation upon learning, for the first time, that she had actually been charged with a crime. The Defendant has neither the financial means, nor the motive, to flee from prosecution in this matter. Rachel Powell homeschools five of her children who range in age from four to seventeen years old. She has significant roots in her community and she would never permanently leave her children behind in an effort to evade any potential punishment in connection with the offenses charged in this case.

In fact, Ms. Powell made efforts to face these charges directly by engaging an attorney to determine if she was charged with a crime and to arrange for her surrender in the event she was facing criminal prosecution. On Wednesday, February 3, 2021, the undersigned counsel sent an email communication to the United States Attorney's Office for the District of Columbia indicating that Ms. Powell was represented by counsel, inquiring if she had been charged with any crime, and, if so, offering to arrange a voluntary surrender of Ms. Powell in the District of Columbia. Counsel did not receive any response from the government until the morning of February 4th when advised by telephone that the FBI was executing an arrest warrant and search warrant at the Defendant's home. Undersigned counsel was not aware of Ms. Powell's location at that time. Upon

learning she was facing criminal charges the Defendant made arrangements, through counsel, to drive back to western Pennsylvania and to surrender herself to the FBI agent holding the warrant for her arrest. Rachel Powell did just that, and provided the FBI with her U.S. passport. She did not run, nor did she hide. The Defendant surrendered herself as instructed. This is not the behavior of an individual who poses any credible risk of flight.

Ms. Powell is also not a danger to the community. While the offenses charged are serious and the events of January 6th are disturbing, this Defendant is not accused of physically assaulting or using pepper spray on any law enforcement officer or other person. There is no evidence we are aware of to suggest that Ms. Powell was armed with a firearm, taser, knife, pepper spray or other weapon that was carried about her person for the purpose of harming another individual. Moreover, there is no known evidence that suggests Ms. Powell made any verbal threats to do harm to anyone, including any member of Congress or other government official. Additionally, there is no evidence that this Defendant posted or sent messages to people bragging that she assaulted people during the events that transpired at the Capitol. There is simply no credible evidence to suggest that Rachel Powell ever intended to do physical harm to any person on January 6, 2021.

While video and photographs seem to depict the Defendant and another individual using a long pole to break a window, there is nothing in the Government's affidavit of probable cause to suggest that Rachel Powell brought that item with her to the Capitol, that she continued to carry that pole into the Capitol building, or that she ever attempted to use that item as a weapon against any person. This evidence depicts a property crime, not a crime against a person. It does not establish that Ms. Powell poses a threat or danger to any member of her community. In fact, without diminishing the serious nature of any felony offense, the crimes charged in this matter relate to the obstruction of or interference with the business of Congress along with other offenses

involving property damage and trespass. The offenses charged do not demonstrate a predilection for engaging in violence directed at persons, a fact that is also born out by Ms. Powell's lack of any criminal history. Clearly, a person with no history of criminality or violence facing charges for the first time in her life does not pose a credible danger to the community.

We also respectfully request that this Honorable Court fashion conditions of release because many similarly situated defendants charged in connection with the events of January 6th have not been detained pending the outcomes of their cases. For ease of reference and review, attached please find as "Exhibit A" a chart detailing a number of recently charged defendants, facing similar allegations of criminal conduct involving the obstruction of Congress, offenses involving damage to property, trespass related crimes, as well as in some cases allegations of making direct threats of violence or even engaging in direct acts of assault, who were all granted pre-trial release. As such, it is respectfully submitted that Rachel Powell should also be released on conditions pending the ultimate outcome of her case.

RESPECTFULLY SUBMITTED:

/s/ Michael J. Engle
MICHAEL J. ENGLE, ESQUIRE
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I, MICHAEL J. ENGLE, ESQUIRE, HEREBY CERTIFY THAT I HAVE FORWARDED BY ELECTONIC FILING, A TRUE AND CORRECT COPY OF THE FOREGOING MEMORANDUM IN SUPPORT OF PRE-TRIAL RELEASE AND TO THE FOLLOWING PERSONS:

HONORABLE LISA PUPO LENIHAN
U.S. COURTHOUSE
700 GRANT STREET
PITTSBURGH, PA 15219

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/s/ Michael J. Engle
MICHAEL J. ENGLE, ESQUIRE
ATTORNEY FOR DEFENDANT

DATED: February 9, 2021